



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.22245 of 2015

and

M.P. (MD) .No.2 of 2015

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P.Anbalagan

.. Petitioner

Vs.

- 1.The Secretary to Government,
Department of Forest and Environment,
Fort St. George,
Chennai - 600 009.
- 2.The Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai - 600 015.
- 3.The Divisional Conservator of Forest,
Trichy Division,
Mannarpuram,
Trichy - 620 029.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings Aa.Aa.3/42562/2012, dated 29.04.2015, confirming the order passed by the 3rd respondent in his proceedings in 13760/10 Pa 2 dated 01.06.2012 and quash the same and consequently direct the respondents herein to refund the amount recovered from the salary of the petitioner with interest.

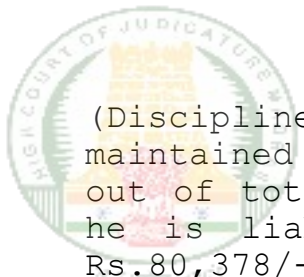
For petitioner : Mr.R.Suresh Kumar

For respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the order of recovery passed by the third respondent and confirmed in the appeal by the second respondent.

2. The learned counsel for the petitioner submitted that while the petitioner was working as a Forester in Thanjavur Social Welfare Forest Range, on 18.08.2010 the third respondent issued a charge memo under Rule 17(a) of the Tamil Nadu Civil Services



(Discipline and Appeal) Rules, alleging that he has not properly maintained the Plantation of Kumki Mannar Teakwood and therefore, out of total loss of Rs.1,60,756/- arrived in the audit objection, he is liable to take responsibility for 50% of the loss ie., Rs.80,378/-, for which the petitioner has submitted his explanation on 22.11.2010 with a request to furnish a copy of the documents relied upon. The third respondent without furnishing the relevant documents, conducting any enquiry and considering the explanation of the petitioner, has passed an order of recovery of Rs.80,378/- from the salary of the petitioner on installment basis. Aggrieved by the same, the petitioner has filed an appeal before the second respondent, the second respondent, without considering the grounds raised by the petitioner in the appeal, has simply rejected the same. Aggrieved by the said orders, the petitioner has filed the present writ petition, after retiring from service on 30.11.2014.

3. He would further submit that the reports based on which the charge memo was issued were not furnished to him and that the exact amount of damage has not been calculated by the respondents. The petitioner has maintained the plantations properly as per the instructions of the higher officials upto 31.03.2010. The work of maintenance of the plantation was awarded to a contractor and therefore, for the mistakes and latches committed by the contractor in maintaining the said plantation, the petitioner cannot be held responsible, but the respondents falsely framed the charge against the petitioner. He would further submit that even as per G.O.Ms.No.92, Environment and Forest Department, dated 03.02.1993, in the case of irregularities resulting in financial losses to the Government, the same shall be recovered in the scale of the District Forest Officer - 25%, Ranger - 40% and Forester and Forest Guard - 35%. But, except the petitioner / Forester, the other officials have not been imposed with punishment in this case. The first appellate Court, without considering the same and without assigning valid reasons, has erroneously rejected the appeal filed by the petitioner. Thus, he prayed to set aside the impugned orders and to direct to refund the amount.

4. The learned Government Advocate appearing for the respondents submitted that when the third respondent went for field inspection on 15.07.2010, he found most of the trees were withered because of non watering and no maintenance. Even if the work is executed in contractor mode, it is the Forester, who should ensure quality and quantity of work and after such verification, certify the bills submitted by the contractor and therefore, an order of recovery of 50% of loss for not maintaining the plants, was passed by the third respondent against the petitioner and the same was confirmed by the second respondent in the appeal. As per Rule 17 (1), a detailed enquiry need not be conducted for passing the order of recovery and hence, no detailed enquiry conducted in this case. The impugned orders are well considered orders and therefore, the same need not be interfered with. Thus, he prayed to dismiss the



5. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the records carefully.

6. Admittedly, it is not in dispute that the reports, based on which the charge memo issued against the petitioner, were not furnished to the petitioner. It is also not in dispute that even after his request, he was permitted to see only the bills sanctioned by him. It is rudimentary that the copies of all materials relied on by the disciplinary authority should be furnished to the delinquent to offer his/her explanation, even if proceedings are summary in nature. Non-furnishing of copies of relied on materials would result in prejudice to the delinquent and it amounts to violation of principles of natural justice.

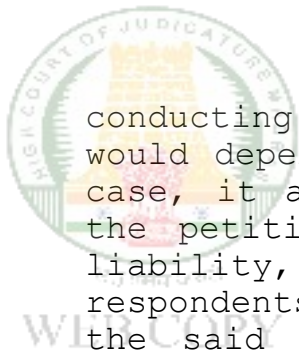
7. Paragraph No.3 of G.O.Ms.No.92, Environment and Forest Department, dated 03.02.1993, reads as follows:

"3.The Government have examined the question of fixation of definite responsibility at each level carefully and they are strongly of the view that according to Section 142(2) of the Tamil Nadu Forest Department Code, the District Forest Officer and the Conservator of Forest should check measures at least 25% and 10% respectively of the works done by the Rangers, the Government therefore direct that in cases of irregularities resulting in financial losses to the Government, recovery of excess or inadmissible items of expenditure be fixed in the following scale:-

District Forest Officer	- 25%
Ranger	- 40%
Forester and Forest Guard	-35%"

From the above, it is clear that for the above irregularities resulting in financial losses to the Government, the third respondent ought to have fixed liability on the above said ratio. But, the petitioner alone has been held liable for the loss and he was discriminated by the respondents. In this case, it is stated that except the petitioner, no other official has been issued with any memo or order of recovery has been passed against them. As there is discrimination in fixing liability and passing the order of recovery by the third respondent and the second respondent has confirmed the impugned order of recovery without even considering the same, this Court is of the view that both the impugned orders are liable to be set aside.

8. It is stated by the respondents that for passing the order of recovery, no enquiry need be conducted as per Rules 17(a) and 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Admittedly, there is no bar under the said Rules for



conducting enquiry in respect of passing order of recovery and it would depend upon the facts and circumstances of the case. In this case, it appears that the entire liability has been fixed only on the petitioner, in violation of the above said G.O. For fixing liability, a detailed enquiry ought to have been conducted by the respondents. But, that has not been done in this case. Hence, for the said reason also, this Court is inclined to set aside the impugned orders.

9. As the order of recovery has been illegally made, this Court is inclined to direct the respondents to refund the recovered amount with interest at the rate of 6% per annum from the date of full recovery of the amount mentioned in the impugned order to till the date of repayment.

10. In view of the above, the impugned orders are set aside and the respondents are directed to refund the amount recovered from the salary of the petitioner with interest at the rate of 6% per annum from the date of full recovery to till the date of repayment, within a period of eight weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

gcg

To

- 1.The Secretary to Government,
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+1 CC to SPL.GP (SR-100[F] dated 03/01/2020)

+1 CC to Mr.C.JEGANATHAN, Advocate (SR-79[F] dated 03/01/2020)

Order made in
W.P (MD) No.22245 of 2015
02.01.2020

VB (24.01.2020) 5P 6C